IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Case No.: 4949/2021

Reportable: YES/NO
Of interest to other Judges: YES/NO
Circulate to Magistrates: YES/NO

In the matter between:

BRANDFORT FORUM	1st Applicant
INA BEUKES N.O.	2nd Applicant
FRANS BESTER POSTHUMUS N.O.	3rd Applicant
JOHAN ALBERTUS FOURIE N.O.	4th Applicant

(The second to fourth applicants are cited in their capacities as the trustees of the Masilonyana Brandfort Forum Trust: IT001914/2021(T))

and

MASILONYANA LOCAL MUNICIPALITY	1st Respondent
MAFUMA CONSULTING PTY LTD	2nd Respondent
LUNGILE MOKOTELI	3rd Respondent

MIKE MANYIKE 4th Respondent

In re:

Case No.: 4949/2021

BRANDFORT FORUM 1st Applicant

INA BEUKES N.O. 2nd Applicant

FRANS BESTER POSTHUMUS N.O. 3rd Applicant

JOHAN ALBERTUS FOURIE N.O. 4th Applicant
(The second to fourth applicants are cited in their capacities as the trustees of the Masilonyana Brandfort Forum Trust: IT001914/2021(T))

and

MASILONYANA LOCAL MUNICIPALITY 1st Respondent

LEJWELEPUTSWA DISTRICT MUNICIPALITY 2nd Respondent

MAFUMA CONSULTING PTY LTD 3rd Respondent

Coram: Opperman, J

Date of hearing: 4 November 2022

Order Delivered: 7 November 2022

Reasons for Judgment: 7 November 2022. The reasons for judgment were handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 7 November 2022. The date and time for hand-down is deemed to be 7 November 2022 at 15h00.

Summary: Leave to Appeal – contempt of court

JUDGMENT

[1] It is common cause that, on 5 November 2021, the Court prohibited the respondents from continuing with a project to install pre-paid – electricity meters in Brandfort. The order was and is unambiguous:

> 1. The first, second and third respondents are interdicted and restrained with immediate effect from installing any pre-paid electricity meters in the town and municipality of Brandfort, Free State…

[2] The order was blatantly ignored by, among others, MAFUMA CONSULTING (PTY) LTD and MIKE MANYIKE and on 12 May 2022 the following order was made:

[12] ORDER

1. The second respondent: **Mafumu Consulting (Pty) Ltd**

> 1.1 The second respondent is in contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;
>
> 1.2 The second respondent is found guilty of contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

1.3 The second respondent is sentenced to payment of a fine of **R50,000.00 (fifty thousand rand)**; the sentence is wholly suspended for **36 (thirty-six) months** on condition that the second respondent complies with the court order granted on **5 November 2021** under civil case cover number: **4949/2021** and is not again convicted of contempt of court committed during the period of suspension;

1.4 The second respondent is ordered to comply with the court order granted on **5 November 2021** under civil case cover number: **4949/2021 to, with immediate effect, desist from installing any pre-paid electricity meters in the town and municipality of Brandfort, Free State Province pending an application for review**.

2. The fourth respondent: **Mr. Mike Manyike**

2.1 The fourth respondent is in contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

2.2 The fourth respondent is found guilty of contempt of the court order granted on **5 November 2021** under civil case cover number: **4949/2021**;

2.3 The fourth respondent is sentenced to **6 (six) months** imprisonment or payment of a fine of **R50,000.00 (fifty thousand rand)**; the sentence is wholly suspended for **36 (thirty-six) months** on condition that the fourth respondent complies with the court order granted on **5 November 2021** under civil case cover number: **4949/2021** and is not again convicted of contempt of court committed during the period of suspension;

2.4 The fourth respondent is ordered to comply with the court order granted on **5 November 2021** under civil case cover number: **4949/2021 and to, with immediate effect, desist from installing any pre-paid electricity meters in**

the town and municipality of Brandfort, Free State Province pending an application for review.

3. The second and fourth respondents are ordered to pay the costs of the application on an attorney and client scale, jointly and severally, the one paying the other to be absolved.

[3] The context of the milieu in which the orders were made is crucial:

THE FACTS

[23] After hearing arguments for the applicants and the respondent and having studied the affidavits and other evidence on record I find that the following facts were proven:[1]

1. There is not any prove of a resolution that was taken by the first respondent's council to install and sell electricity by means of pre-paid meters. The embarrassment to the first respondent is that they could not attach the resolution to the Court documents and that previous court orders to make the resolution available to the residents came to nothing.
2. There is not any evidence that proper community participation took place prior to the decision to use an external service provider.
3. There is not any evidence that proper procurement by means of competitive tender process was followed before the third respondent was appointed. The contract that was supplied to the Court shows that it is not properly signed and it is a copy.[2] It has no evidentiary value at all as it is. The appointment of the third respondent seems to be unlawful on the evidence before court.
4. The manner in which tariffs for the supply and sale of pre-paid electricity has been established and fixed has not been placed before the Court and evidence by the

---

1 See pages 300 to 344 of the Bundle dated 4 November 2021.
2 Page 297 of the Indexed Bundle dated 4 November 2021.

applicants shows that it might be illegal. The tariffs are purported, by prove of current sale thereof and the receipts submitted by the applicants, to be elevated illegally.

5. There is no evidence before the Court that the third respondent is duly registered with NERSA to trade in electricity or is exempted thereof.

6. The community, by mouth of the applicants, were told that the use of the pre-paid meters will be voluntarily; the first respondent maintains that the use is compulsory and this exasperates the situation of fair administrative action towards the residents of Brandfort.

7. There is not any evidence before the Court as to what the percentages are that the service providers will gain with the installation of the pre-paid meters and the payment for electricity by the citizens. Transparency in this regard is imperative to prove that the town and its citizens will profit positively from the decision. A proper and relevant budget has not been forthcoming. The monies must be allocated to pay the ESCOM debt and improve service delivery and not line the pockets of service providers unfairly.

8. No effective information has been supplied regarding when the first respondent would have adopted applicable bylaws. No bylaws were adopted by the first respondent to the applicants' and the Court's knowledge that permitted the conduct that led to the authorization of the pre-paid electricity meters. If the bylaws were promulgated it was done without the applicants being aware thereof. The alternative legislation relied upon by the first respondent was not complied with.

CONCLUSION

[24] The potential for and probability of unlawful conduct *in casu* is real.

[25] To allow unlawful conduct to persist is irreparable harm perpetrated against the Constitution of the Republic of South Africa, 1996. To allow for unsuspecting tax payers to be victims of unlawful conduct for any period is irreparable harm. The resident does not have a choice but to pay for the electricity through the already installed; and meters to be installed. If the tariffs are illegal, it is irreparable harm.

[26] The respondents have shown with their conduct in this litigation and case 4903/2021, that there is no other remedy that will stop them to revisit their conduct than an interdict.

[27] It is apposite to warn that the public servants that are involved here might be held personally accountable for their conduct and the costs of the litigation. The tax-payer may not be expected to foot the bill for a case that could have been resolved before it went into litigation; as said above, it would have been a simple matter of putting the evidence on the table. If any party was mistaken in its actions the situation could have been remedied by mature counsel, conduct and mediation. One would hope that sanity will prevail and therefor the costs will be ordered to be in the cause.

ORDER

[28] The following order is made in the interim:

1. That the first, second and third respondents are interdicted and restrained with immediate effect from installing any pre-paid electricity meters in the town and municipality of Brandfort, Free State Province pending an application for review by the applicants of the first and/or second respondent's decision to install pre-paid electricity meters and/or to determine the tariffs/charges for the distribution and sale of electricity on pre-paid basis and/or to appoint the third respondent as service provider to install pre-paid electricity meters on the basis of the principles of legality, alternatively fair administrative action basis, alternatively both the sources of review; alternatively, pending an application for a declaration that the first and/or second respondents' conduct is unconstitutional and to be set aside.

2. The applicants must institute the intended application(s) in paragraph 1 above within fifteen (15) court days from the date of this order. The calculation of the fifteen (15) days period to exclude the day on which this order is granted; being 5 November 2021.

3. The interdict will lapse if the intended application(s) referred to in paragraph 1 above is not instituted within fifteen (15) court days from the date of this order and will be operative until judgment has been handed down in the application(s). The calculation of the fifteen (15) days period to exclude the day on which this order is granted; being 5 November 2021.

4. The costs of this application are reserved for consideration in the intended application for review/application for declaratory relief.

[4] Further to the above:

[6] On 12 May 2022 I ordered, in their absence and by default, that the first (Masilonyana Local Municipality) and third (Lungile Mokoteli) respondents are in contempt of court and convicted them accordingly and a suspended sentence followed. This order was subsequently rescinded by agreement between the parties and set aside on 30 June 2022 by Van Rhyn, J. The case of Mafumu Consulting (Pty) Ltd and Mr. Mike Manyike was postponed to 9 June 2022 to hear argument from counsel on their behalf.

[7] On his own admission Mr. Manyike states that he has gone on and installed over 80 pre-paid electricity meters after the court orders and explicit warnings by the court because the residents of the town of Brandfort requested him to do so. The citizens of Brandfort cannot overrule a court order. Mr. Manyike, as continually assisted by his legal representatives, realised that he may not install any pre-paid meters. He displays a contempt for the court that is shocking.

[8] It is trite that he is being imbursed for the installation of the meters on the very process that is the core of the review and that caused the interdict. The tariffs on the meters are at issue. No number of excuses or defences that the residents asked him to install the meters will legalise his conduct. He and his

legal representatives were warned and cautioned; over and over. Non-compliance of this nature cannot be tolerated.

[9] The process employed to achieve the installation of the meters and the contract with the second and fourth respondents are alleged to be improper, illegal and might be to the detriment of the residents of Brandfort and the administration of justice.

[10] The law as applied in Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State v Zuma and Others [2021] ZACC 18 that was followed by the case of Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State and Others (CCT 52/21) [2021] ZACC 28; 2021 (11) BCLR 1263 (CC) (17 September 2021) is applicable here.

[11] It has been proven beyond any doubt that Mafumu Consulting (Pty) Ltd and Mr. Mike Manyike deliberately, intentionally (i.e., wilfully) and without any justification, disobeyed the order granted by this court on 5 November 2021.

[5] The assessment of an application for leave to appeal lies in the words of the Supreme Court of Appeal that was spoken recently in *Ramakatsa and others v African National Congress and another* [2021] JOL 49993 (SCA) in March 2021 at paragraph [10]:

> If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a Court of appeal could reasonably arrive at a conclusion different to that of the trial Court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. Those prospects of success must not be remote, but there

must exist a reasonable chance of succeeding. A sound rational basis for the conclusion that there are prospects of success must be shown to exist. (Accentuation added)

[6] The atmosphere of this case reminded of the words of the Constitutional Court in *Shinga v The State and another (Society of Advocates (Pietermaritzburg Bar) intervening as Amicus Curiae); S v O'Connell and others* 2007 (2) SACR 28 (CC) that defined the judicial character of the task conferred upon a presiding officer in determining whether to grant leave to appeal. Although having heard the evidence and having made a ruling; the judge is called upon to consider whether another Court may reach a different conclusion. This requires a careful analysis of both the facts and the law that have supported the judgement *a quo* and a consideration of the possibility that another Court may differ either in relation to the facts or the law or both. This is a task that has been carried out by High Court Judges for many years and it is a judicial task of some delicacy and expertise. It should be approached on the footing of intellectual humility and integrity, neither over-zealously endorsing the ineluctable correctness of the decision that has been reached, nor over-anxiously referring decisions that are indubitably correct to an appellate Court. (Accentuation added)

[7] To conclude; the Applicants in this matter did not convince on proper grounds that they have prospects of success on appeal.

[8] **ORDER**

The applications for leave to appeal are dismissed with costs.

M OPPERMAN, J

APPEARANCES

For the BRANDFORT FORUM & OTHERS:	**ADVOCATE W GROENEWALD** **WP PIETERS** Hendrikz & De Vletter BRANDFORT c/o **SYMINGTON & DE KOK ATTORNEYS** 169B Nelson Mandela Drive Westdene BLOEMFONTEIN 051 505 6600 Ref: M GERTENBACH/FXM3327 jaucamp@symok.co.za
For MAFUMA CONSULTING PTY LTD & MIKE MANYIKE	**ADVOCATE S GROBLER SC &** **ADVOCATE HENDRIKS** **GN STRAUSS** KRUGER VENTER INC 68B Kellner Street WESTDENE BLOEMFONTEIN 051 011 2323 Ref: SK/TL/MB0139 reception@krugerventerinc.co.za